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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 1997/Pausa 19, 1918 (Saka)

THE PORT LAWS (AMENDMENT) ORDINANCE, 1997

No. 1 OF 1997

Promulgated by the President in the Forty-seventh Year of the
Republic of India.

An Ordinance further to amend the Indian Ports Act, 1908 and the
Major Port Trusts Act, 1963.

WHEREAS Parliament is not in session and the President is satisfied that circumstances
exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

- (1) This Ordinance may be called the Port Laws (Amendment) Ordinance, 1997.
- (2) It shall come into force at once.

Short title
and com-
mencement.

CHAPTER II

AMENDMENTS TO THE INDIAN PORTS ACT, 1908

Amendment of
section 3.

2. In section 3 of the Indian Ports Act, 1908 (hereafter in this Chapter referred to as the Ports Act), for clause (I), the following clause shall be substituted, namely:—

‘(I) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1973;’.

2 of 1974.

Amendment of
section 6.

3. In section 6 of the Ports Act, in sub-section (I),—

(i) in clause (j), after the words "rates to be paid", the words "in a port other than a major port" shall be inserted;

(ii) for clause (jj), the following clauses shall be substituted, namely:—

"(jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government;

(jja) for fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, other than a major port, when belonging to the Government;";

(iii) for clause (k), the following clauses shall be substituted, namely:—

"(k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for licensing and regulating the crews of any such vessels; and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels and the conditions under which such vessels shall be compelled to ply for hire and further for conditions under which any licence may be revoked;

(kk) for providing for the fees payable in respect of the services specified in clause (k) for any port, other than a major port;".

Amendment of
section 33.

4. In section 33 of the Ports Act,—

(a) in sub-section (I), after the words "in each of the ports mentioned in the First Schedule", the words "other than a major port" shall be inserted;

(b) in sub-section (3), after the words "declares any other port", the words "other than a major port" shall be inserted.

Substitution of
section 34.

5. For section 34 of the Ports Act, the following section shall be substituted, namely:—

Variation of
port dues by
Government.

"34. The Government may after consulting,—

(a) in case of ports other than major ports, the authority appointed under section 36;

(b) in case of major ports, the Authority constituted under section 47A of the Major Port Trusts Act, 1963,

exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port subject to this Act from payment of port dues and cancel the exemption, or may vary the rates at which port-dues are to be fixed in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues:

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

6. In section 35 of the Ports Act, in sub-section (1), after the words "Within any port subject to this Act", the words "not being a major port" shall be inserted. Amendment of section 35.
7. In section 46 of the Ports Act, after the words "A vessel entering any port", the words "not being a major port" shall be inserted. Amendment of section 46.
8. In section 47 of the Ports Act, after the words "When a vessel enters a port", the words "not being a major port" shall be inserted. Amendment of section 47.
9. In the First Schedule to the Ports Act, in Part I, entries under columns 2, 3 and 4 shall be omitted. Amendment of First Schedule.

CHAPTER III

AMENDMENT TO THE MAJOR PORT TRUSTS ACT, 1963

- 28 of 1963. 10. In section 2 of the Major Port Trusts Act, 1963 (hereafter in this Chapter referred to as the Major Port Act), after clause (a), the following clause shall be inserted, namely:— Amendment of section 2.
- “(aa) “Authority” means the Tariff Authority for Major Ports constituted under section 47A;”.
11. In section 29 of the Major Port Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 29.
- “(3) Notwithstanding anything contained in clause (a) of sub-section (1), the right to fix rates vested in the Board shall vest in the Authority as from the date it is constituted under sub-section (1) of section 47A.”.
12. In section 42 of the Major Port Act, in sub-section (4), for the words and figures “leviable according to the scale framed under section 48 or section 49 or section 50”, the words “specified by the Authority, by notification in the Official Gazette” shall be substituted. Amendment of section 42.
- 10 of 1940.
26 of 1996. 13. In section 47 of the Major Port Act, in sub-section (3), in clause (i), for the words and figures “The Arbitration Act, 1940”, the words and figures “The Arbitration and Conciliation Act, 1996” shall be substituted. Amendment of section 47
14. After Chapter V of the Major Port Act, the following Chapter shall be inserted, namely:— Insertion of Chapter VA.

“CHAPTER VA

TARIFF AUTHORITY FOR MAJOR PORTS

- 47A. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports. Constitution and incorporation of Tariff Authority for Major Ports.
- (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.
- (3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.
- (4) The Authority shall consist of the following Members to be appointed by the Central Government, namely :—
- (a) a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;
- (b) a Member from amongst economists having experience of not less

than fifteen years in the field of transport or foreign trade;

(c) a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

Term of office,
conditions of
service, etc., of
Chairperson
and other
Members.

47B. (1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may--

(a) relinquish his office by giving in writing to the Central Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 47D.

(4) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

Disqualifica-
tion for the
office of
Chairperson
and Member

47C. A person shall be disqualified for being appointed as a Chairperson or as a Member of the Authority if he is disqualified for being chosen as a Trustee under section 6.

Removal, etc.,
of Chairperson
and Members.

47D. (1) The Central Government shall remove from the Authority the Chairperson or any Member, if he—

(a) becomes subject to any disqualification under section 47C;

(b) refuses to act or becomes incapable of acting;

(c) in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest, or

(d) is otherwise unsuitable to continue as the Chairperson or as a Member.

(2) The Central Government may suspend the Chairperson or any Member pending an inquiry against him.

(3) No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seat of the Chairperson or Member removed shall be declared vacant.

(4) The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

Meetings

47E. The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations.

47F. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

Authentication of all orders and decisions of the Authority.

47G. No act or proceeding of the Authority shall be invalidated merely by reason of—

Vacancy, etc., not to invalidate proceedings of the Authority.

(a) any vacancy in, or any defect in, the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

47H. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

Officers and employees of the Authority.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be specified by regulations."

15. In section 48 of the Major Port Act, in sub-section (1),—

Amendment of section 48.

(a) for the opening portion, the following shall be substituted, namely:—

"The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches—";

(b) in clause (e), the words excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act" shall be omitted.

16. In section 49 of the Major Port Act, in sub-section (1), for the opening portion, the following shall be substituted namely:—

Amendment of section 49

"The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:—";

17. After section 49 of the Major Port Act, the following sections shall be inserted, namely: —

Insertion of new sections 49A and 49B

"49A. (1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.

Fees for pilotage and certain other services

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

Fixation of
port-dues.

49(B). (1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette."

Substitution
of section
50 and
insertion of
new
sections
50A, 50B
and 50C.

18. For section 50 of the Major Port Act, the following sections shall be substituted, namely:—

Consoli-
dated rates
for combi-
nation of
services.

"50. The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in section 49A or the port dues to be fixed on vessels entering the port and for the duration of such dues as specified in section 49B.

Port-due on
vessels in
ballast.

50A. A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

Port-due on
vessels not
discharging
or taking
in cargo.

50B. When a vessel enters a port but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

Publication
of orders of
Authority.

50C. Every notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee."

Amendment
of section 51.

19. In section 51 of the Major Port Act, for the word "Board" in both the places where it occurs, the word "Authority" shall be substituted.

Omission of
section 52.

20. Section 52 of the Major Port Act shall be omitted.

Amendment of
section 54.

21. In section 54 of the Major Port Act,—

(a) in sub-section (1), for the words "direct any Board", the words "direct the Authority" shall be substituted;

(b) in sub-section (2),—

(i) for the words, brackets and figure. "If any Board against whom a direction is made under sub-section (1) fails or neglects to comply with such direction", the words, brackets and figure. "If the Authority fails or neglects to comply with the direction under sub-section (1)" shall be substituted;

(ii) in the proviso, for the words "the Board", the words "the Authority" shall be substituted.

22. In section 57 of the Major Port Act, for the words "A Board shall not lease", the words "The Authority shall not lease" shall be substituted. Amendment of section 57.

23. In section 59 of the Major Port Act, in sub-section (1) for the words "leviable by a Board under this Act", the words "leviable under this Act" shall be substituted. Amendment of section 59.

24. After section 110 of the Major Port Act, the following section shall be inserted, namely:— Insertion of new section 110A.

110A. (1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification: Power of Central Government to supersede the Authority.

Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Authority in the manner provided in section 47A.

25. In section 111 of the Major Port Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendme... of section 111.

"(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section".

26. For section 112 of the Major Port Act, the following section shall be substituted, namely:— Substitution of section 112.

"112. Every person employed by the Authority or by a Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of section 21 of the said Code." Every person employed by the authority of this Act to be a public servant.

Amendment
of section
121.

27. In section 121 of the Major Port Act, for the words "against a Board or any member", the words "against the Authority a Board or any member" shall be substituted.

Amendment
of section
122.

28. In section 122 of the Major Port Act, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

"(ba) the salaries, allowances payable to and the other terms and conditions of the Chairperson and members of the Authority;"

Insertion of
new section
123A.

29. After section 123 of the Major Port Act, the following section shall be inserted, namely:—

Power of
Authority
to make
regulations.

"123A. The Authority may make regulations consistent with this Act for all or any of the following purposes, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under section 47E;

(b) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 47H".

Amendment
of section
132.

30. In section 132 of the Major Port Act,—

(a) in sub-section (1),—

(i) in the opening portion, for the words "made by a Board or by the Central Government", the words "made by a Board or the Authority or the Central Government" shall be substituted;

(ii) in clause (b), for the words "made by the Central Government", the words "made by the Authority or the Central Government" shall be substituted;

(b) in sub-section (2), for the words "made by the Central Government", the words "made by the Authority or the Central Government" shall be substituted.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.